

December 16, 2004

Ramona Phillips  
Phillips Consulting Group  
2400 N.E. 2<sup>nd</sup> Avenue  
Suite C  
Miami, Fl 33137

**RE: REQUEST FOR ADVISORY OPINION 04-208**

Dear Ms. Phillips:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on December 15, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts between serving as a vendor and a lobbyist for the same client on the same contract. You are also seeking an opinion regarding any conflicts between your service as a subcontractor on a Metrorail Rehabilitation contract and serving as a member of the Program Management Consultant team for the People's Transportation Plan.

The Transit Agency recently issued an RFP for a consultant to provide rehabilitation services on Metrorail trains. The scope of services includes removing, dismantling, cleaning, inspecting, repairing, overhauling, replacing, reassembling, testing, and reinstalling vehicle components and equipment. The scope of services also includes training of Transit personnel and project management and engineering necessary for the integration of the new parts into the existing system. The Metrorail Rehabilitation is a People's Transportation Plan project. Although not included in the scope of services under the RFP, you propose to

provide public relations services on the Metrorail Rehabilitation contract.

You are also one of the proposed members of team for the Program Management Consultant for the People's Transportation Plan.<sup>1</sup> You will provide community outreach and public relations services as a member of the Program Management Consultant team.

The Commission found the Conflict of Interest ordinance permits you to serve as contractor and lobbyist on the same contract only if the agreement does not amount to a prohibited contingency fee agreement. Section 2-11.1(s)(7) provides that "no person may in whole or in part, give or agree to pay or give a contingency fee to another person." A contingency fee is any monetary or nonmonetary benefit which is dependent or in any way contingent on the passage, defeat or modification of an ordinance, resolution, action or decision of the Board of County Commissioners, the County Manager, a County board or committee or county personnel. A prohibited fee agreement would be created between a lobbyist and a client where the lobbyist receives a percentage of the contract as a consultant or subcontractor for services unrelated to the scope of services between the client and the County. However, a lobbyist may serve as a subcontractor and a lobbyist on the same contract if the consultant performs services which are included in the scope of services between the client and the County.

In the instant case, a potential conflict exists between your proposed duties under the Metrorail Rehabilitation contract and your proposed duties as a member of the Program Management Consultant team for the People's Transportation Plan. You will provide similar services under both agreements. Since the

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<sup>1</sup> The County is currently preparing to enter into negotiations with Phillips team. The final contract award is slated to be presented to the Board of County Commissioners in February, 2005.

Program Management Consultant is to provide overarching services for all People's Transportation Plan projects, a consultant may not perform identical services as a member of the Program Management Consultant team and a People's Transportation Plan project. Therefore, you may not participate as a consultant on the Metrorail Rehabilitation project and as a member of the Program Management Consultant team for the People's Transportation Plan.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS  
Executive Director

cc: Christopher Mazzella, Inspector General  
Andrew Zawoyski, DPM